

Group II: Applicable working conditions

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Scope of the research and methodology

- How we narrowed our scope of research
 - Many possible notions of *mobility*
- ➔ Cross border mobility of workers in a geographic meaning
- Permanent mobility: EU citizens who move permanently in another Member State to work
 - Posted Workers

Agenda

- 1) The identification of the applicable law:
few words on the Rome I Regulation
- 2) Permanent mobility: working conditions of
EU citizens who move permanently in
another Member State to work
- 3) Working conditions of Posted Workers

Identification of the applicable law


Art 8 Rome I

- Art 8 par 1: An individual employment contract shall be governed by the law chosen by the parties (...). Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by **provisions that cannot be derogated from by agreement** under the law that, in the absence of choice, would have been applicable (...).
- Autonomous or national notion?

Identification of the applicable law

Art 9 Rome I

- Art 9 par 1: **Overriding mandatory provisions** are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.
- Autonomous notion
- Interpretation unclear and therefore different from state to state.



Permanent mobility:
Working conditions of EU
citizens who move
permanently in another
Member State to work

Case law on shared issues

Permanent Mobility – issues

► Social security issues

- **NE – DE – BE – IT – AUS**
- Problem of access to the social security
- Entitlement linked to length of services
- Amount of contributions (IT – NE)
- Article 13 of EU Regulation 883/2004: the legislation of the Member State of residence if he pursues a substantial part of his activity in that Member State
- Regional insurance system (BE)

Permanent Mobility – issues

- ▶ Recognition of professional titles (BE) → Directive 2005/35/EG
- ▶ Language issues (BE – DE – ITA “Angonese”)
- ▶ Entitlement linked to length of services for labour rights (severance payments) (AT – DE)
- ▶ AUS – Turkey (special case direct discrimination)



Posting of workers



Principles / main dispositions (Directive 96/71)

- Worker who, *for a limited period*, carries out his work in the territory of a Member State other than the State in which he normally works (posted workers)
- Whatever the law applicable to the employment relationship, employers must guarantee workers posted to their territory the following terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:
 - by law, regulation or administrative provision, and/or
 - by CBA as defined by art. 3 §8
 - (a) maximum work periods and minimum rest periods;
 - (b) minimum paid annual holidays;
 - (c) minimum rates of pay, including overtime rates;
 - (d) conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
 - (e) health, safety and hygiene at work;
 - (f) protective measures with regard to pregnancy;
 - (g) equality of treatment between men and women and other provisions on non-discrimination

National transposition of the EU Directive

Mandatory working conditions for posted workers as in the Directive

- **Germany:** Posting of workers act preexisted the Directive, the list of working conditions is equal as in the Directive
- **Austria:** list is not copied, but implemented as one major part of the act on wages and social dumping in a way that it fits the Austrian legal system: each provision is included in a specific piece of legislation
- **Netherlands**
- **Italy** (transp. has limited the provisions to be respected for the posted workers)

Further mandatory working conditions for posted workers than in the Directive

- **France** (+ right to strike + also CBA at branch of industry level not declared universally applicable)
- **Spain** (+ right to strike + privacy)

- Additional form of protection in Germany, Italy and Netherlands:
→ Joint/shared liability with the sub-contractor on remuneration issues

National transposition of the EU Directive

... or a very broad implementation

- **Belgium: “hard core” = all criminally sanctioned provisions**
 - ALL sectoral CBAs rendered generally binding by Royal Decree (e.g.: 13th month premium, indexation of salary)
 - Annual vacation (not only number of days and holiday pay: *also extra vacation allowances*)
 - Not: Employment Contracts Act (dismissals)
 - Also work rules, social documents (exemption max 12 months if Limosa), cf. optional enforcement tools
 - A specific joint liability regarding payment of remuneration in construction sector. Belgium has lifted this optional option (+ not only for posted workers)

Focus on remuneration (“minimum wages”)

Provided by law ?

- **Spain:** minimum wage set forth by an act + CBA **but all are not universally applicable...**
- **FR:** minimum wage set forth by an act + CBA
- **NE:** Minimum wage set forth by an act + generally binding CBA
- **GER:** Minimum wage set forth by an act + CBA, that are declared universally applicable

Not provided by law but by CBA?

- **BE:** not provided in an act; provided by national CBA and sectoral CBA rendered mandatory applicable by Royal Decree
- **AUS:** generally applicable CBA also for posted workers. Nearly all CBAs are concluded by the chamber of commerce, membership to which is mandatory. These are already universally applicable
- **IT:** not provided in an act; provided by CBA **but none are universally applicable...**

Focus on remuneration after Directive 2018/957

- Principle of “*equal pay for equal work*” between posted and local employees
- From “minimum rates of pay” to “remuneration”
 - Application to posted workers of all the mandatory elements of remuneration
 - Remuneration is broader than just “minimum rates of pay”. It includes all the mandatory constituent elements of remuneration:
 - Seniority allowances; Allowances for dirty work; 13th or 14th premiums
- The notion of remuneration is to be defined by “*national law and/or practice of the Member State to whose territory the worker is posted*”
 - **FR** (BE): already a broad definition of remuneration (including benefits)
 - **IT**: implementation will have a positive impact (clarifies)

Conclusions

› Posting workers

- Social issues are going parallel with economic issue: the more you protect the protect the posted worker, the more you preserve the fair national competitiveness
- Is it reasonable to maintain the exclusion of the social security contributions: competitiveness is more about overall cost of labour (incl. soc.sec.contributions) than (only) wages?
- Positive evolution from “minimum rates of pay” to “remuneration”, but the problem of non universally declared CBAs remains open

THANK YOU!

Q&A